IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4079 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TATA CHEMICALS LTD. - Petitioner(s)

Versus

NAFISHABEN YAKUBALI - Respondent(s)

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Appearance :

MR VARUN K PATEL FOR MR KM PATEL for Petitioner(s)

MR KISHOR M PAUL for Respondent(s) : 1.2.1,1.2.2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/09/2005

ORAL JUDGMENT

In the present petition, the petitioner-employer has challenged the legality of the award dated 15th December 2004 passed by the Labour Court, Jamnagar in Reference

(LCJ) No.99/91.

2. The respondents herein are the legal heirs of deceased workman one Shri Yakubali Akbarali. The workman was engaged by the petitioner as khalasi since 2.6.71. A chargesheet was issued against the workman on 11.7.85 in which it was alleged that on 5.7.85 at about 3.30 p.m., the officers of the petitioner Company had visited the official quarters alloted to the deceased workman to inquire into some unauthorized construction carried out by him. The team of the Company was taking photographs from outside when the deceased workman along with his brother started shouting and abusing Shri Nair who was the Estate Officer. When other officials intervened, they were assaulted and Shri Nair was also beaten up. The camera was snatched away from the officers. The clothes of Shri Nair was torn and he received injuries. With some difficulty, Shri Nair could escape and take shelter in the police station. Upon conclusion of the departmental inquiry, by an order dated 6.9.86, the workman was dismissed from service. It is this order of dismissal which the workman challenged before the Labour Court. It appears that simultaneously his brother, who was also engaged by the petitioner Company, was also

dismissed for the very same incident had approached the Labour Court by filing reference (LCJ) No.1806/90.

3. Before the Labour Court, the workman admitted the legality of the departmental inquiry. He, however, questioned the conclusions reached by the Disciplinary Authority during the course of inquiry. The Labour Court by its impugned award was pleased to set aside the dismissal order. As a consequence thereof, in view of the fact that the workman had expired on 4.5.2000, the heirs of the deceased workman were held entitled to receive 60 per cent of the wages for the period between the date of dismissal till his death. In the impugned award, the Labour Court observed that the workman is acquitted by the criminal court for the very same incident. The Labour Court observed that there was some exchange of legal notices between the workman and the Company regarding unauthorized construction. It was observed that the Company had not taken any legal action regarding alleged unauthorized construction nor any steps were taken against unauthorized construction. It was observed that though the workman had committed misconduct, his past 16 years of service is not taken into account. The Labour Court, therefore, concluded

that the punishment of dismissal from service was excessive. In exercise of powers under section 11-A of the Industrial Disputes Act, therefore, the Labour Court found it appropriate to interfere with the punishment awarded and direct payment of 60 per cent wages from the date of dismissal till the death of the workman in favour of the heirs of the deceased workman.

4. From the above discussion, it can be seen that the workman had admitted the legality of the departmental inquiry conducted against him. The Labour Court had in fact come to the conclusion that the workman did commit the misconduct. However, considering his past 16 years of service and the controversy regarding alleged unauthorized construction, the Labour Court found that the order of dismissal was harsh. In the facts of the present case, I find that the Labour Court erred in interfering with the order of punishment imposed on the workman by the petitioner Company. There were serious charges of assaulting the officials of the Company unprovoked. As noted earlier, when the official party tried to take photographs of the unauthorized construction carried out by the workman, they were assaulted and one of them was in fact badly beaten up.

Such misconduct could not have been ignored simply on the ground that the workman had by then completed 16 years of service. It is by now well settled that the Courts and Tribunals would be justified in interfering with the quantum of punishment imposed by the employer only if the penalty imposed shocks the conscience of the Court (see 2005 AIR SCW 95, see also 2005 AIR SCW 1115 and 2005 AIR SCW 1149).

5. The contention of the learned advocate for the respondents that the workman having been acquitted by the criminal court, the conclusion of departmental inquiry ought to have been set aside cannot be accepted. The nature of proof required in a criminal proceeding being vastly different from those required in departmental proceedings, simplciter acquittal in a criminal case would not be a conclusive proof of innocence of the concerned person (see AIR 2003 SC 1571). Even otherwise, the Labour Court has come to the conclusion that the workman did commit misconduct. In the departmental inquiry also, sufficient evidence was led by the petitioner to drive home the charges.

6. In the result, what I find is that against the

deceased workman, serious charges of assaulting and causing injuries to the officers of the Company were validly proved through a departmental inquiry. In that view of the matter and in view of the seriousness of the proved misconduct, it was not open for the Labour Court to interfere with the quantum of punishment.

7. Consequently, the impugned award is required to be and is hereby set aside. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)